(11)

(13)

M. (Cri.) /278 /2002

IN THE HONRABLE HIGH COURT OF JUDICATURE AT BILASPUR

Cri.. A.No. :- ~~1437/96~~ 2136/98 D.B.

Appealant :- Umendra s/o Guharam yadav .

(In jail) 25 rs. Bhensamuda distt- Raipur.

Versus

Respondent State of C.G.

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(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 2136/98 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B.: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DILIP RAO SAHEB DESHMUKH, JJ.

20-6-2005

Shri Abhay Tiwari, counsel for the appellants.

Shri U.N.S. Deo, Public Prosecutor for the State/ respondent.

Oral order.

The accused/appellants have preferred this criminal appeal through Superintendent, Central Jail, Raipur, being aggrieved by the judgment of conviction and sentence dated 29-6-98 passed by the Special Judge, SC/ST, Raipur, whereby learned Special Judge after holding the accused/appellants guilty under Section 302 of the I.P.C., sentenced each of the accused/appellants to undergo imprisonment for life. At the same time, he acquitted the accused/appellants from the offence under Sections 3(2)(v) and 3(2)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 201 of the I.P.C.

We have heard Shri Abhay Tiwari, learned counsel for the appellants and Shri U.N.S. Deo, Public Prosecutor for the State/ respondent.

(लिये)

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Brief facts leading to filing of this appeal are that Mangtin Bai was married to one Bhagatram (PW-17) and she was residing with him at village Charoda. However, in the month of February 1997 accused/appellants Umend Yadav and Khileshwar Yadav took Mangtin Bai with them. Thereafter, Bhagatram, husband of Mangtin Bai, started searching her in the villages Dhamandeeh, Kherjhiti and Mudagaon, but he could not trace out her. However, in the month of March, 1997 Mangtin Bai and accused Umend came to village Mudagaon, then the villagers caught them and handed over them to Police Constable Ram Kumar who happens to be on duty in the school during the examination. Thereafter, constable Ram Kumar handed over them to village Kotwar Prem Shankar who took them to Police Station Chura. As the head constable of the Police Station was not in the police station, therefore, Kotwar left accused Umend and Mangtin Bai at the police station and they went to village Nagoi to the residence of his brother Maniram. Accused Umend and Mangtin Bai stayed there for one day. Brother of Umend Maniram expressed displeasure about the conduct of Umend, therefore, Umend Yadav and Mangtin Bai left the house of

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Maniram. However, Dulari Bai, wife of Maniram, gave one suitcase to Mangtin Bai.

On 23-4-97, in between 1:30 pm to 2 pm, PW-16 Girish Jain saw Mangtin Bai and the accused persons. He also saw one cycle and suitcase with them. All the three were in drunken condition. Mangtin Bai was asking for more liquor. When she asked for more liquor, then the accused persons assured Mangtin Bai that she will get liquor at village Nagoi. Thereafter, on 26-4-97, Kuni Bai (PW-7) saw the dead body and suitcase, therefore, she informed PW-1 Brijlal. On hearing this, some villagers reached on the spot and the matter was reported to the Police Station Chura. On receiving this report, Police reached on the spot and recorded Dehati Ex.-P/1 on 27-4-97 and prepared a site plan, after giving notice to Panchas, Panchanama of the dead body Ex.-P/3 was prepared. The postmortem was conducted on the site itself by PW-19 Dr. Sanjay Dadu and he prepared postmortem report Ex.-P/20 in which he mentioned that the dead body is 2-4 week old.

During the investigation, the Investigating Officer took into possession blood stained soil, plain soil, clothes, hair, broken bangles, suitcase and empty liquor bottle. He took one Avon

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cycle into possession and after completion of the investigation, charge sheet was filed against the accused/appellants for commission of the offence under Section 302 read with Section 34 of the I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Perusal of the judgment of the trial Court shows that the accused/appellants have been convicted on the sole ground that the deceased and the accused/appellants were last seen together on 23-4-97 by PW-16 Girish Jain, therefore, the conviction rests on the circumstantial evidence only, as there is no eyewitness to the incident. In order to rest the conviction on circumstantial evidence, settled law on the point is that *in a case based on circumstantial evidence the Court can record conviction but it must satisfy itself that the circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the light of the above principle, if we examine evidence available on record, then there is only one witness who is said to have seen the accused with the deceased last time on 23-4-97. PW-16 Girish Kumar Jain has stated in his evidence that on 23-4-97, Wednesday, he was going from village Kosami to Bamhani for collecting money. When he was mid way, he saw a lady who was undressing herself. Two persons were standing nearby. When he thought as to why these persons are standing in the forest, thinking that these persons must be teasing the lady, he went towards them in order to help that lady. When he reached near them, he saw that lady was in drunken condition and the accused/appellants were there. Accused Channu Sahu asked her that let us go to the house. The lady was repeatedly asking for more liquor, then the accused persons said that let us go to village Nagoi, there they will provide her liquor. Accused Umend Yadav was abusing the lady. However, he left the scene. Thereafter, on Sunday he came to know through one Ganeshram Deewan that one dead body has been found. He became anxious to see the body and when he went to the spot, he saw the dead body was in advance stage of decomposition and one suitcase was lying at some distance of the body. After seeing the suitcase, he

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recollected that the body is of that lady which he saw along with two persons and those persons were the accused persons present in the Court.

In order to hold a person guilty on the basis of last seen evidence the Hon'ble Apex Court in the matter of **BODHRAJ ALIAS BODHA AND OTHERS V. STATE OF JAMMU AND KASHMIR** reported in **(2002) 8 SCC 45** held that:

> "the theory of last seen comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

The Hon'ble Apex Court further held that:

> "It would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together."

Therefore, last seen evidence is a weak type of evidence and without corroboration from other evidence it is not always

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

safe to convict the accused solely on the ground of last seen and particularly, when the time gap between the offence and last seen is of about 3 days, then it is not safe to convict the accused/appellants on the basis of last seen evidence of Girish Jain because there is no evidence on record as to what happened in between 3 days where the deceased went and in whose company she was. In order to connect the appellants with the murder of Mangtin Bai, there is no other evidence except the evidence of Girish Kumar Jain. No articles belonging to the deceased have been recovered from the possession of the accused/appellants. Even the trial Court at one stage was of the opinion that the evidence is a weak type of evidence, but ultimately believing that evidence has convicted the accused/appellants for the murder of Mangtin Bai on the basis of last seen.

In our considered opinion, in view of the above settled law and evidence available on record, the prosecution has utterly failed in connecting the accused/appellants with the murder of Mangtin Bai, as such the judgment of the trial Court cannot be sustained, therefore, there is no alternative before us except to allow this appeal and set aside the judgment of the trial Court

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

convicting the accused/appellants for commission of the offence under Section 302 of the I.P.C. for committing the murder of Mangtin Bai.

In the result, the appeal is allowed and the accused/ appellants are acquitted from the ~~offence~~ charge under Section 302 of the I.P.C.. They be set at liberty with immediate effect, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Barve

(पीछे देखिये)